

IN THE SENATE

SENATE BILL NO. 1254

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO INJURY TO CHILDREN; REPEALING SECTION 16-1605, IDAHO CODE, RELATING TO THE REPORTING OF ABUSE, ABANDONMENT OR NEGLECT; REPEALING SECTION 16-1606, IDAHO CODE, RELATING TO IMMUNITY; REPEALING SECTION 16-1607, IDAHO CODE, RELATING TO REPORTING IN BAD FAITH AND CIVIL DAMAGES; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1524, IDAHO CODE, TO PROVIDE FOR THE REPORTING OF ABUSE, ABANDONMENT OR NEGLECT, TO DEFINE A TERM, TO PROVIDE EXEMPTIONS AND TO PROVIDE PENALTIES; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1524A, IDAHO CODE, TO PROVIDE IMMUNITY; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1524B, IDAHO CODE, TO PROVIDE CIVIL DAMAGES FOR MAKING CERTAIN REPORTS IN BAD FAITH; AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE THAT THERE IS NO LIMITATION OF TIME WITHIN WHICH A PROSECUTION MUST BE COMMENCED FOR THE FAILURE TO REPORT CERTAIN OFFENSES; AMENDING SECTION 19-403, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 6-1903, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 54-4407, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Sections [16-1605](#), [16-1606](#) and [16-1607](#), Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Chapter 15, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-1524, Idaho Code, and to read as follows:

18-1524. REPORTING OF ABUSE, ABANDONMENT OR NEGLECT -- PENALTY. (1) Any physician, resident on a hospital staff, intern, nurse, coroner, school teacher, day care personnel, social worker or other person having reason to believe that a child under the age of eighteen (18) years has been abused, abandoned or neglected, as such terms are defined in section 16-1602, Idaho Code, or who observes the child being subjected to conditions or circumstances which would reasonably result in abuse, abandonment or neglect shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the proper law enforcement agency or the department. The department shall be informed by law enforcement of any report made directly to it. When the attendance of a physician, resident, intern, nurse, day care worker or social worker is pursuant to the performance of services as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the institution or his designated delegate who shall make the necessary reports.

(2) For purposes of subsection (3) of this section the term "duly ordained minister of religion" means a person who has been ordained or set

1 apart, in accordance with the ceremonial, ritual or discipline of a church or  
 2 religious organization that has been established on the basis of a community  
 3 of religious faith, belief, doctrines and practices, to hear confessions and  
 4 confidential communications in accordance with the bona fide doctrines or  
 5 discipline of that church or religious organization.

6 (3) The notification requirements provided in subsection (1) of this  
 7 section do not apply to a duly ordained minister of religion, with regard to  
 8 any confession or confidential communication made to him in his ecclesiasti-  
 9 cal capacity in the course of discipline enjoined by the church to which he  
 10 belongs if:

11 (a) The church qualifies as tax-exempt under 26 U.S.C. section  
 12 501(c)(3);

13 (b) The confession or confidential communication was made directly to  
 14 the duly ordained minister of religion; and

15 (c) The confession or confidential communication was made in the manner  
 16 and context that places the duly ordained minister of religion specif-  
 17 ically and strictly under a level of confidentiality that is considered  
 18 inviolate by canon law or church doctrine. A confession or confiden-  
 19 tial communication made under any other circumstances does not fall un-  
 20 der this exemption.

21 (4) Failure to report as required in this section shall be:

22 (a) A misdemeanor if the unreported act of abuse, abandonment or ne-  
 23 glect constitutes a misdemeanor.

24 (b) A felony if the unreported act of abuse, abandonment or neglect  
 25 constitutes a felony. A felony conviction pursuant to this subsection  
 26 shall be punishable by a fine of not more than five thousand dollars  
 27 (\$5,000), a term of imprisonment not to exceed five (5) years, or both  
 28 such fine and imprisonment.

29 SECTION 3. That Chapter 15, Title 18, Idaho Code, be, and the same is  
 30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 31 ignated as Section 18-1524A, Idaho Code, and to read as follows:

32 18-1524A. IMMUNITY. Any person who has reason to believe that a child  
 33 has been abused, abandoned or neglected and, acting upon that belief, makes  
 34 a report of abuse, abandonment or neglect as required in section 18-1524,  
 35 Idaho Code, shall have immunity from any liability, civil or criminal, that  
 36 might otherwise be incurred or imposed. Any such participant shall have the  
 37 same immunity with respect to participation in any such judicial proceed-  
 38 ing resulting from such report. Any person who reports in bad faith or with  
 39 malice shall not be protected by this section. Any privilege between hus-  
 40 band and wife or between any professional person except the lawyer-client  
 41 privilege including, but not limited to, physicians, counselors, hospitals,  
 42 clinics, day care centers and schools and their clients shall not be grounds  
 43 for excluding evidence at any proceeding regarding the abuse, abandonment or  
 44 neglect of the child or the cause thereof.

45 SECTION 4. That Chapter 15, Title 18, Idaho Code, be, and the same is  
 46 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 47 ignated as Section 18-1524B, Idaho Code, and to read as follows:

18-1524B. REPORTING IN BAD FAITH -- CIVIL DAMAGES. Any person who makes a report or allegation of child abuse, abandonment or neglect knowing the same to be false or who reports or alleges the same in bad faith or with malice shall be liable to the party or parties against whom the report was made for the amount of actual damages sustained or statutory damages of two thousand five hundred dollars (\$2,500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.

SECTION 5. That Section 19-401, Idaho Code, be, and the same is hereby amended to read as follows:

19-401. NO STATUTE OF LIMITATIONS FOR CERTAIN FELONIES. Notwithstanding any other provision of law, there is no limitation of time within which a prosecution for the following crimes must be commenced:

- (1) Murder;
- (2) Voluntary manslaughter;
- (3) Rape pursuant to section 18-6101(3) through (9), or section 18-6108(3) through (7), Idaho Code, or the failure to report rape pursuant to such sections as required in section 18-1524, Idaho Code;
- (4) Sexual abuse of a child or lewd conduct with a child as set forth in sections 18-1506 and 18-1508, Idaho Code, or the failure to report such sexual abuse of a child or such lewd conduct with a child as required in section 18-1524, Idaho Code; or
- (5) An act of terrorism as set forth in sections 18-8102, 18-8103, 18-3322, 18-3323 and 18-3324, Idaho Code.

SECTION 6. That Section 19-403, Idaho Code, be, and the same is hereby amended to read as follows:

19-403. MISDEMEANORS. (1) Except as provided in subsections (2) and (3) of this section, a prosecution for any misdemeanor must be commenced by the filing of the complaint or the finding of an indictment within one (1) year after its commission.

(2) A prosecution for failure to report or failure to cause to be reported the abuse, abandonment or neglect of a child as provided for in section ~~16-1605~~ 18-1524, Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within four (4) years after its commission.

(3) A prosecution for misuse of funds as provided for in section 18-5702(1), Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission.

SECTION 7. That Section 6-1903, Idaho Code, be, and the same is hereby amended to read as follows:

6-1903. DISCHARGE OF A MENTAL HEALTH PROFESSIONAL'S DUTY TO WARN. (1) The duty to warn arises only under the limited circumstances specified in section 6-1902, Idaho Code. The duty to warn a clearly identifiable victim shall be discharged when the mental health professional has made a reason-

1 able effort to communicate, in a reasonable timely manner, the threat to the  
 2 victim and has notified the law enforcement agency closest to the patient's  
 3 or victim's residence of the threat of violence, and has supplied a request-  
 4 ing law enforcement agency with any information he has concerning the threat  
 5 of violence. If the victim is a minor, in addition to notifying the appropri-  
 6 ate law enforcement agency as required in this subsection, the mental health  
 7 professional shall make a reasonable effort to communicate the threat to the  
 8 victim's custodial parent, noncustodial parent, or legal guardian.

9 (2) The provisions of this section do not limit or affect the mental  
 10 health professional's duty to report child abuse or neglect in accordance  
 11 with section ~~16-1605~~ 18-1524, Idaho Code.

12 SECTION 8. That Section 54-4407, Idaho Code, be, and the same is hereby  
 13 amended to read as follows:

14 54-4407. PEER ASSISTANCE ENTITY TO REPORT TO BOARD. (1) The legisla-  
 15 ture recognizes that confidentiality is essential to obtaining maximum dis-  
 16 closure from impaired health care professionals; such disclosure is vital  
 17 to the success of the peer assistance process. It is also recognized that  
 18 the public must be protected from health care professionals who continue to  
 19 practice in an impaired state.

20 (2) If the peer assistance entity reasonably believes that a health  
 21 care professional continues to practice in an impaired state after entering  
 22 into the peer assistance entity's program and despite the peer assistance  
 23 entity's recommendations for treatment or modification of practice to  
 24 remove risk to the public from the effects of the impairment, the peer assis-  
 25 tance entity shall immediately notify the appropriate board regarding the  
 26 impaired health care professional and provide all documentation relevant  
 27 to substantiate the impaired practice. Similarly, if the licensing board  
 28 reasonably believes that a health care professional continues to practice in  
 29 an impaired state, it can require the peer assistance entity to provide all  
 30 documentation available on the current ability to practice of the individ-  
 31 ual. Information that does not deal directly with the professional ability  
 32 to practice will remain privileged.

33 (3) The board shall have access to financial and administrative records  
 34 necessary to determine contract compliance and to reports regarding aggre-  
 35 gate statistical information; provided, information released pursuant to  
 36 this subsection shall not contain data which could be used to specifically  
 37 identify past or present peer assistance program participants.

38 (4) The board shall have the authority to use any documentation or in-  
 39 formation supplied to it from a peer assistance entity pursuant to this sec-  
 40 tion or section 54-4406, Idaho Code, as it deems necessary and which is con-  
 41 sistent with applicable Idaho law.

42 (5) Nothing in this chapter shall be deemed to supersede any duty to  
 43 report under chapter 19, title 6, or section ~~16-1605~~ 18-1524 or ~~16-1606~~  
 44 18-1524A, Idaho Code.